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Supreme Court, U.S.
FILED
FEB 5 - 2005
OFFICE OF THE CLERK

No. 04-975

In the Supreme Court of the United States

KAREN LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends that his sentence under the federal Sentencing Guidelines was imposed in violation of the rule announced in *United States* v. *Booker*, No. 04-104 (Jan. 12, 2005), and *United States* v. *Fanfan*, No. 04-105 (Jan. 12, 2005). In *Booker* and *Fanfan*, this Court held that the Sixth Amendment, as construed in *Blakely* v. *Washington*, 124 S. Ct. 2531 (2004), applies to the federal Sentencing Guidelines. *Booker*, slip op. 5-20 (Stevens, J., for the Court). In answering the remedial question in those cases, the Court then applied severability analysis and held that the Guidelines are advisory rather than mandatory, and that federal sentences are reviewable for reasonableness. *Booker*, slip op. 2-26 (Breyer, J., for the Court). Accordingly, the appropriate disposition is to grant certiorari, vacate the judgment of the court of appeals, and remand the case

for further consideration in light of *Booker* and *Fanfan*. The court of appeals can then decide what effect, if any, those decisions have on petitioner's sentence, taking into account any applicable doctrines of waiver, forfeiture, and harmless error.* See *id.* at 25-26.

PAUL D. CLEMENT
Acting Solicitor General

JANUARY 2005

* The government waives any further response to the petition unless the Court requests otherwise.